



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Loral Data Systems

File: B-250532.3

Date: March 30, 1993

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Richard G. Harris, Esq., and Kevin P. Hillyer, Esq., Tuverson & Hillyard, for Universal Navigation Corporation, an interested party.

A.L. Haizlip, Esq., Department of Transportation, Federal Aviation Administration, for the agency.

Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency improperly awarded contract for cockpit voice recorders to firm whose product does not meet certain technical standards and other specification requirements is denied where (1) solicitation did not provide for evaluation of item for compliance with standards but, rather, merely called for evidence of authorization by Federal Aviation Administration, which has statutory authority to approve items as complying with standards; (2) solicitation did not provide for submission of technical information for evaluation to verify compliance with requirements; and (3) awardee unequivocally offered to furnish items in accordance with solicitation requirements.

DECISION

Loral Data Systems protests the award of a contract to Universal Navigation Systems under request for proposals (RFP) DTFA02-92-R-00024, issued by the Federal Aviation Administration (FAA) for solid state cockpit voice recorders (CVR). Loral alleges that the award was improper because the Universal CVR does not meet certain RFP requirements.

We deny the protest.

BACKGROUND

The RFP required the awardee to furnish 47 solid state CVRs in accordance with the requirements of FAA technical

issuance engineering order (TIEO) 91-E-24, which defines the FAA's minimum performance standards for CVRs. The TIEO incorporates several other documents as part of the specification, including FAA Technical Standard Order (TSO) C123. TSOs generally set forth the minimum performance standards for specified articles used on all civil aircraft, see 14 C.F.R. § 21.601(b)(1) (1992); TSO C123 contains the minimum performance standard for CVRs.

In connection with the TSO C123 requirement, the RFP statement of work required offerors to submit evidence that the CVR manufacturer holds a TSO authorization issued by FAA under 14 C.F.R. part 21. A TSO authorization is a design and production approval document issued by FAA to a manufacturer whose product has been found to meet a specific TSO. 4 C.F.R. § 21.601(b)(2). TSO C123 requires that the CVR meet the minimum performance standard set forth in the European Organization for Civil Aviation Electronics (EUROCAE) Minimum Operational Performance Requirements (MOPR) for Cockpit Voice Recorder System, Ref. ED-56, chapters 4, 5 and 6. Other than the requirement for evidence of TSO authorization, the RFP did not require any specific technical information in the proposal.

Three offerors, including Loral and Universal, submitted proposals by the March 5, 1992, due date. As none of the three had yet obtained the required TSO authorization for the CVR models they were offering, the contracting officer suspended the procurement until the offerors met the requirement. In July, both Loral and Universal submitted the required TSO authorization letters; the third offeror withdrew from the competition. The contracting officer then requested best and final offers. Universal submitted the low offer of \$359,932.50; Loral's price was 34 percent higher at \$483,685. Both proposals were found to be technically acceptable. As the RFP provided for award based on the low priced, technically acceptable offer, Universal was awarded the contract on September 9. Loral filed its protest of the award in our Office on September 25.

Loral argues that Universal's offered CVR, model CVR-30A, does not meet certain requirements of TIEO 91-E-24 as required by the RFP. Loral identifies a number of areas in which allegedly the CVR-30A does not meet the specifications. Most of these are requirements for authorization under TSO C123; two are requirements of Aeronautical Radio, Inc. (ARINC) Characteristic No. 557 and Specification 404A, which are also referenced in the TIEO. As discussed below, we find that the agency properly concluded on the basis of Universal's TSO authorization that the CVR-30A met the TSO C123 requirements. As to the ARINC requirements, we find that Loral's allegations of noncompliance are without merit.

TSO C123 REQUIREMENTS

As noted above, TSO C123 prescribes the minimum operational performance standards of EUROCAE ED-56, chapters 4, 5 and 6. These standards relate to performance of the CVR under normal test conditions (chapter 4), performance under environmental conditions (chapter 5), and crash survivability (chapter 6). With respect to crash survivability, ED-56 notes that the chapter 6 test criteria apply to CVRs that use magnetic tape as the recording medium, and prescribes the test procedures in ED-55 chapter 7 for solid state CVRs. Loral maintains that Universal's test results, submitted to FAA as part of its application for TSO C123 authorization, establish that the CVR-30A does not meet the ED-55 requirements. Loral concludes that the agency's technical evaluation was flawed because it did not give proper consideration to the test results.

As noted above, the RFP did not provide for submission or evaluation of technical proposals. The only specific information requested in connection with the RFP's technical requirements was evidence of TSO C123 authorization; Universal complied by furnishing a copy of its authorization letter. As the RFP neither required additional technical information, such as test results supporting the authorization, nor provided for a detailed technical evaluation of any such test results, the agency properly viewed Universal's TSO C123 authorization as establishing the firm's compliance with the ED-55 requirements. See Jarrett S. Blankenship Co., B-241704, Feb. 19, 1991, 91-1 CPD ¶ 187.

Loral's assertion that Universal's test results establish a lack of compliance with the ED-55 requirements amounts to an allegation that Universal's TSO C123 authorization was improperly granted. The Federal Aviation Act of 1958, 49 U.S.C. App. § 1301 et seq. (1988), confers upon the Secretary of Transportation the authority to establish minimum standards governing aircraft appliances. 49 U.S.C. App. § 1421(a)(2). The Secretary has exercised this authority in part by requiring that CVRs for use in civil aircraft be "approved," 14 C.F.R. §§ 23.1457 and 25.1457 (1992); certification in the form of a TSO authorization constitutes such approval. 14 C.F.R. § 21.601. The propriety of the agency's decision to issue a TSO authorization pursuant to its statutory authority to regulate airworthiness standards is not within the scope of our bid protest function. Thus, under the circumstances here, where there is nothing in the RFP indicating the agency intended to perform a separate technical evaluation based on the requirements underlying the TSO authorization,

we will not review the test results to determine whether Universal met the requirements for TSO authorization.

ARINC REQUIREMENTS

ARINC Characteristic No. 557 and Specification 404A deal with the required physical characteristics of airborne voice recorders and the equipment cases in which they are installed on a cockpit rack. Among other things, Characteristic No. 557 sets forth standardization and interchangeability requirements, and refers to Specification 404A for certain design requirements. Loral contends that the CVR-30A does not meet these requirements because information in its proposal shows that (1) the hardware on the front panel of the unit--a handle, underwater locating beacon, and test connector--intrudes into a mandatory two-inch "keep-out area" at the bottom of the panel, and (2) the unit does not have two hold-down pin holes for compatibility with older cockpit racks that have pin connectors.

While the RFP did not require submission of any technical information establishing compliance with the ARINC requirements, Universal did submit a technical proposal which described and illustrated the design characteristics of the CVR-30A. Even where a solicitation does not explicitly require a showing of compliance with each requirement, a proposal that establishes noncompliance with a material requirement or casts doubt on whether the requirement will be met cannot be accepted for award. Mine Safety Appliances Co.; Interspiro, Inc., B-247919.5; B-247919.6, Sept. 3, 1992, 92-2 CPD ¶ 150, aff'd, National Draeger, Inc.--Recon., B-247919.7, Nov. 6, 1992, 92-2 CPD ¶ 325. While Loral argues that Universal's offer should have been rejected for this reason, we conclude based on our review of the ARINC requirements and Universal's proposal

¹In any case, based on our review of Universal's test results, it appears that Loral's allegations of noncompliance are based on an overly restrictive reading of the ED-55 requirements. For example, Loral alleges that the Universal CVR did not meet the requirements of the impact shock test, which requires that a collision force be applied to the CVR's most vulnerable axis, because Universal did not conduct preliminary testing to determine which axis is the most vulnerable, and did not conduct the test with an underwater locating beacon attached to the unit. ED-55, however, only requires preliminary testing to identify the most vulnerable axis "where necessary"; attachment of an underwater locating beacon for the test is only required "for those test axes where its presence may have a damaging effect." On the face of the test results there was nothing to indicate that these conditions applied.

that FAA reasonably found the CVR-30A in compliance with the ARINC design requirements.

Contrary to Loral's allegation, there is no requirement that the area two inches from the bottom of the CVR front panel be clear of all protrusions. The requirement that Loral refers to, at Attachment 9 of ARINC Characteristic No. 557, concerns size limitations for a front "doghouse," an extension on the front of the unit which allows the manufacturer to fit equipment inside the unit that would not fit into the standard size rack-mounted case. The Characteristic strongly discourages the use of doghouses but provides that, if one is necessary, it must be located at least two inches from the bottom of the front panel. The Characteristic does not contain any similar restriction on the location of required items such as the handle, beacon and test connector. There is a requirement that other projections from the front of the CVR, such as handles, extend no more than 2.625 inches from the front panel; drawings included with Universal's proposal (and with Loral's protest submissions) establish that the CVR-30A meets this requirement with a maximum projection of 1.75 inches. We therefore conclude that FAA properly determined that the CVR-30A is compliant with ARINC Characteristic No. 557.

As for the alleged requirement for hold-down pin holes, section 2.4 of ARINC Specification 404A states that pins and pin holes are no longer the recommended hold-down device for new CVR construction; instead, a connector shell is to be used. The section provides further that:

"Equipment unit designers should note that there may be circumstances where new construction must still provide hold-down clearance only holes in units to accommodate older racks with hold-down pins installed."

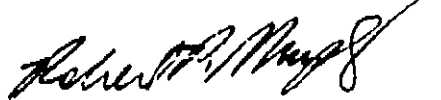
In the agency's view, the above language does not create a mandatory requirement for pin holes. However, a note in Appendix 6 to the specification, which sets forth requirements for the required shell connectors, states that "[t]wo rear hold-down holes are required . . . irrespective of whether customer plans to use rear hold-down pins on rack or not"; this is the language upon which Loral relies in urging that Universal's CVR does not meet the requirement.

While the two provisions appear to be in conflict, a reading of the entire ARINC specification suggests that the Appendix 6 requirement for pin connector holes is not applicable here. In this regard, section 1.0 of the specification, entitled "General Considerations," states that two types of connectors, known as DPA and DPD connectors, "should not be

used for new design unless dictated by a need for generation interchangeability between the new and the old"; the section states that information on these two connector types "has been relegated to the appendix." Section 2.4 of the specification provides further that "information on the location of DPA and DPD connector shells has been relegated to Appendix 6." Appendix 6 concerns only the DPA and DPD connectors. For information on the recommended shell connectors for new construction, section 2.4 refers to Attachments 7, 8, and 11; nowhere do these attachments require, as Appendix 6 does, that pin holes be provided irrespective of the type of rack in which the unit is intended to be used. Thus, it appears that the Appendix 6 note requiring pin holes is a holdover from the outdated requirements pertaining to DPA and DPD connectors. We therefore find reasonable the agency's view that pin holes are not a mandatory requirement of ARINC Specification 404A. While there "may be circumstances" where pin holes are required, as section 2.4 of the specification acknowledged, the solicitation here did not inform offerors that such circumstances exist in this procurement; we conclude that the agency properly accepted the CVR-30A without pin holes. See Computer Sciences Corp., B-213287, Aug. 6, 1984, 84-2 CPD ¶ 151.

In any case, even if the agency's interpretation of the pin hole requirement could be viewed as a waiver of the requirement for Universal, it did not prejudice Loral. While Loral argues generally that it could have offered a less durable, less expensive CVR had it known that the agency would waive material RFP requirements, it does not argue that it could have offered a less expensive model that meets all of the RFP requirements except the one for pin holes. Since Loral has not established that its competitive position would have changed had it been aware of the agency's interpretation of the pin hole requirement, there is no basis to object to acceptance of Universal's item without the pin holes. See Tektronix, Inc., B-244958; B-244958.2, Dec. 5, 1991, 91-2 CPD ¶ 516.

The protest is denied.


James F. Hinchman
General Counsel